

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

Robert Smart

Enforcement Case No. 06-4914

And

Smart Planning Company

Respondents

\_\_\_\_\_ /

*Issued and entered*  
on December 18, 2006  
*by Richard D. Lavolette*  
*Chief Deputy Commissioner*

**ORDER TO CEASE AND DESIST**

The Office of Financial and Insurance Services of the Michigan Department of Labor and Economic Growth, pursuant to the Michigan Administrative Procedures Act of 1969, MCL 24.201 *et. seq.*, ("MAPA") and the Michigan Uniform Securities Act, as amended, MCL 451.501 *et. seq.* ("Act"), and the Rules promulgated under the Act, says that:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The staff of the Office of Financial and Insurance Services ("OFIS") alleges that the following facts are true and correct:

1. Smart Planning Company is a Missouri Corporation that was established in June of 1987. The corporation filed an Application for Certificate of Authority to Transact Business or Conduct Affairs in Michigan in January of 1993. The Michigan Corporations Division automatically withdrew the foreign profit corporation status for Smart Planning Company in July of 1995. Missouri administratively dissolved the corporation on August 29, 2006.
2. Robert Smart is President and Treasurer of Smart Planning Company.

3. Robert Smart and Smart Planning Company are collectively referred to herein as "Respondents."
4. OFIS is responsible for the licensing and regulation of securities and enforcement of the provisions of the Act, as amended, MCL 451.501 *et seq.*
5. Respondent Robert Smart was previously registered as an agent in Michigan. Respondent Robert Smart's agent status was termed on July 22, 2003.
6. Subsequently, Respondent Robert Smart applied to OFIS for an agent registration in August of 2003 when he began working with QA3 Financial Corporation. OFIS did not approve Respondent Robert Smart's agent application.
7. In correspondence dated September 15, 2005, Respondent Robert Smart acknowledged that he did not have proper registration to conduct securities business in Michigan.
8. In exchange for capital investments, Respondents offer promissory notes to Michigan residents.
9. Respondents have made several investments through Respondent Robert Smart and Respondent Smart Planning Company. On Friday, December 8, 2006, Respondents received a letter from the Respondent Robert Smart indicating: "The note programs you have participated in were my creation and are worthless."
10. Section 401(z) of the Act, MCL 451.801(z) includes as a "security" any "contractual or quasi contractual arrangement pursuant to which:
  - a. A person furnished capital, other than services, to an issuer;
  - b. A portion of that capital is subjected to the risks of the issuer's enterprise;
  - c. The furnishing of that capital is induced by the representations of an issuer, promoter, or their affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise;
  - d. The person furnishing the capital does not intend to be actively involved in the management of the enterprise in a meaningful way; and
  - e. A promoter or its affiliates anticipate, at the time the capital is furnished, that financial gain may be realized as a result thereof."
11. Respondents' promissory notes meet the above referenced requirements.
12. The securities offered by Respondents are not registered nor are they exempt from registration under the Act.
13. Respondents knew or had reason to know that Section 301 of the Act, MCL 451.701, makes it unlawful for a person to offer or sell any security in the State of Michigan unless it is:



- a. Registered under the Act,
  - b. An exempt security or transaction under Section 402 of the Act, or
  - c. Is a federally covered security.
14. Respondents further knew or had reason to know that Section 401(z) of the Act, MCL 451.801(z) defines a "security," which includes an investment contract.
15. Respondents knew or had reason to know that Section 101(1) of the Act, MCL 451.501(1), makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to employ any device, scheme, or artifice to defraud.
16. Respondents further knew or had reason to know that Section 101(2) of the Act, MCL 451.501(2), makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to make any untrue statement of a material fact or omit any material fact or to otherwise commit fraud.
17. Respondents further knew or had reason to know that Section 101(3) the Act, MCL 451.501(3), makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to engage in any act, practice, or course of business, which operates as a fraud or deceit upon any person.
18. In connection with the offer and sale of the securities in question, Respondent Robert Smart and Respondent Smart Planning Company violated Section 101 of the Act by engaging in the following conduct:
  - a. Respondents knowingly sold unregistered, non-exempt securities to Michigan residents.
  - b. Respondents knowingly sold securities without being registered.
  - c. Respondent Robert Smart failed to disclose that he was not registered to sell securities.
  - d. Respondent Robert Smart led [redacted] to believe that Israel's Incorporated was a debtor on the promissory note dated July 15, 2004, issued to [redacted] when, in fact, this was untrue.
  - e. Respondent Robert Smart led [redacted] to believe that [redacted], President of [redacted], signed the aforementioned promissory note, when, in fact, this was a forgery.
  - f. Respondent Robert Smart led [redacted] to believe that he was investing into Land Equity High Income, L.L.C./LE Income, L.L.C. when, in fact, this offering was fictitious.
  - g. Respondent Robert Smart led [redacted] to believe that the signature on the Land Equity High Income, L.L.C./LE Income, L.L.C. Subscription Agreement was that of [redacted] when, in fact, this was a forgery.

19. Respondents failed to provide financial statements such as a balance sheet or income statement to investors in connection with the notes and Subscription Agreements offered.

WHEREAS, Respondents, offered and sold unregistered securities, i.e., promissory notes; and

WHEREAS, an investment contract is a security as defined in Section 401(z) of the Act, MCL 451.801(z); and

WHEREAS, Respondents were engaged in the business of effecting transactions in securities in Michigan without being registered; and

WHEREAS, Respondents are not registered as a securities agent; and

WHEREAS, Respondents are not registered as an investment adviser; and

WHEREAS, Respondents are not registered as a broker-dealer in the State of Michigan; and

WHEREAS, Section 301 of the Act, MCL 451.701, provides that it is unlawful for any person to offer or sell any security in Michigan unless the security is: registered under the Act, the security or transaction is exempt under Section 402 of the Act, MCL 451.802, or the security is a federally covered security; and

WHEREAS, the above referenced promissory notes offered and sold by the Respondents do not meet any of the requirements listed in Section 301 of the Act, MCL 451.701; and

WHEREAS, Respondents offered and sold unregistered securities in the State of Michigan in violation of Section 301 of the Act, MCL 451.701; and

WHEREAS, based on the foregoing, OFIS Staff recommends that the Commissioner find that Respondents engaged in acts and practices that violate Section 301 of the Act, MCL 451.701, and Rules promulgated under the Act; and

WHEREAS, Section 101(1) of the Act, MCL 451.501(1), makes it unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to employ any device, scheme, or artifice to defraud; and

WHEREAS, Section 101(2) of the Act, MCL 451.501(2), makes it unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to make any untrue statement of a material fact or omit any material fact or to otherwise commit fraud; and



WHEREAS, Section 101(3) the Act, MCL 451.501(3), makes it unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to engage in any act, practice, or course of business, which operates as a fraud or deceit upon a person; and

WHEREAS, Respondent Robert Smart failed to disclose to investors that he was not registered to sell securities in the State of Michigan; and

WHEREAS, Respondents sold fictitious promissory notes to residents of the State of Michigan; and

WHEREAS, Respondents in connection with the offer, sale, or purchase of securities made fictitious offerings and provided fictitious Subscription Agreements to residents of the State of Michigan; and

WHEREAS, Respondents failed to provide financial statements such as a balance sheet or income statement to investors; and

WHEREAS, based on the foregoing, OFIS Staff recommends that the Commissioner find that Respondents engaged in acts and practices that violate Section 101 of the Act, MCL 451.501, and Rules promulgated under the Act; and

WHEREAS, the Office of Financial and Insurance Services finds this Order necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

**IT IS THEREFORE ORDERED**, pursuant to Section 408 of the Act, MCL 451.808 and Section 409 of the Act, MCL 451.809, that:

1. Respondents shall immediately **CEASE AND DESIST** from violating Sections 301 and 101 of the Act.
2. Respondent Robert Smart shall pay to the state of Michigan, through the Office of Financial & Insurance Services ("OFIS"), a civil fine in the amount of \$2,000.00. The fine shall be paid on or before 30 days of the date of entry of this Order.
3. Respondent Smart Planning Company shall pay to the state of Michigan, through the Office of Financial & Insurance Services ("OFIS"), a civil fine in the amount of \$2,000.00. The fine shall be paid on or before 30 days of the date of entry of this Order.
4. Failure to comply with this ORDER will subject you to one or more of the following:
  - (a) A civil penalty of not more than \$1,000 for each violation of this Act, but not to exceed a total of \$10,000.
  - (b) A criminal penalty of not more than \$25,000 for each violation, or imprisonment of not more than 10 years, or both.

You may file with the Administrator within 15 days after service of this Order a written request for a hearing. The Administrator, within 15 days after your filing, shall issue a notice of hearing and set a date for the hearing. Any request for a hearing should be addressed to: the Office of Financial and Insurance Services, Attention: Hearing Coordinator Elizabeth Thompson, P.O. Box 30220, Lansing, Michigan 48909.

If you do not request a hearing, or it is not ordered by the Administrator within 15 days, this Order will stand as entered and will be FINAL.

It is important to understand that any statements that you present in response to this Order may be used against you at a hearing. It is also important to understand that you have the right, at your own expense, to have an attorney assist you at a hearing.

Any other communication regarding this Order should be addressed to the Office of Financial and Insurance Services, Attention: Marlon F. Roberts, P.O. Box 30220, Lansing, Michigan 48909.

MICHIGAN DEPARTMENT OF  
LABOR & ECONOMIC GROWTH

Dated: 12-18-06

By:



Richard D. Lavolette  
Chief Deputy Commissioner  
Office of Financial and Insurance Services